THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION Nos.1506 and 5613 of 2005

Dated:01.04.2010

W.P.No.1506 of 2005:

Between:

The Depot Manager, APSRTC,
Tirupathi-I Depot, Chittoor District. .. Petitioner.

And

The Industrial Tribunal-cum-Labour Court,
Ananthapur District, rep. by its Presiding Officer,
and another. .. Respondents.

W.P.No.5613 of 2005:

Between:

S.K. Rao. .. Petitioner.

And

The Depot Manager, APSRTC,
Tirupathi-I Depot, Chittoor District,
and another. .. Respondents.

COMMON ORDER:

Since both these writ petitions are interconnected, they are being disposed of by this common order.

For the sake of convenience, the parties shall be referred to as arrayed in W.P.No.1506 of 2005.

Petitioner is the management and 2nd respondent is the workman. It appears, while the 2nd respondent, who was working as driver in A.P. State Road Transport Corporation (for short 'the Corporation'), was driving the bus bearing No. AP 9 Z 1949 on 29.11.1998 on the route Kandadu-Tirupathi, the bus involved in a fatal accident with a scooter bearing No. ATC 8998 near cotton mills at 1045 hours, resulting the death of pillion rider and grievous injuries to other persons, besides damages to the bus. On the basis of a preliminary enquiry report submitted by the Traffic Inspector-II, Tirupati-I Depot, on 05.12.1998, the workman was placed under suspension and was issued with a charge sheet dated 11.12.1998 enumerating the following charges:

> "For having driven the bus AP 9 Z 1949 in rash and negligent manner with an excessive speed and lack of anticipation on route Kandadu to Tirupati which resulted in accident with a scootarist ATC 8998 at Cotton Mills near Renigunta on 29.11.98 causing death of one among the occupants of scooter and grievous injuries to

other, besides causing damages to the bus, which constitutes misconduct under Reg.28 (xxxi) of APSRTC Employees (Conduct) Reg. 1963."

The workman submitted his explanation. However, having not satisfied with the explanation submitted by the workman, a detailed enquiry was ordered by the management. After a detailed enquiry was conducted, the disciplinary authority ultimately passed an order on 11.05.1999, removing the claimant from service. Both the appeal and the review petition filed by the claimant, aggrieved by the said punishment imposed by the disciplinary authority, were dismissed by the appellate as well as the reviewing authorities respectively. Thereafter, the workman filed a claim petition, in I.D.No.362 of 2002, under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act'), before the 1st respondent-Industrial Tribunal-cum-Labour Court, Anantapur. It was the case of the workman before the Labour Court that when the scootarist tried to overtake the motorcycle going ahead of his scooter, the scooter hit the right side bumper of the bus, and as such, the scootarist was responsible for the accident and there was no fault on his part. Before the Labour Court, none was examined and no documents were marked on either side. However, on the basis of the material made available on record, the Labour Court came to the conclusion that though the accident occurred due to the contributory negligence on the part of the scootarist and the workman, the punishment of removal from service imposed on the workman was grossly disproportionate to that of the misconduct proved and, accordingly, passed the impugned award, dated 02.04.2004, setting aside the order of removal and directing the management to reinstate the workman into service with continuity of service, but without backwages. However, the management was directed to impose a

punishment of deferment of two annual grade increments with cumulative effect on the workman and was also directed not to engage the workman on a passenger vehicle but to provide him with some alternative work. Aggrieved thereby, the management filed the writ petition being W.P.No.1506 of 2005, whereas the workman filed writ petition being W.P.No.5613 of 2005, insofar as denying the backwages, withholding of two annual grade increments with cumulative effect and directing the management not to engage him on passenger vehicle.

Learned counsel for the petitioner-management strenuously contended that the Labour Court, having found that the workman was also partly responsible for the accident by not applying breaks immediately, ought not to have set-aside the order of removal and further ought not to have directed the management to reinstate the workman into service with continuity of service and not to engage him on the passenger vehicle, but to provide him alternative work.

Having heard the learned counsel on either side and perusing the material made available on record, I am of the opinion that the findings recorded by the Labour Court, in fact, have no basis whatsoever. The conductor and one Murugappan, passenger, in their evidence before the Enquiry Officer, have categorically stated that while the scootarist, unmindful of the bus coming in the opposite direction, tried to overtake the motorcycle going ahead of his scooter, his scooter hit on the right side bumper of the bus, resulting the death of the pillion rider. Be that as it may, the Labour Court, while holding that there was a contributory negligence on the part of the scootarist and the workman, found that the punishment of removal from service was disproportionate to that of the misconduct proved and, hence,

exercising its powers by invoking Section 11-A of the I.D. Act, has rightly passed the reasoned impugned order as stated above. Thus, the impugned award does not suffer from any infirmities calling for interference of this Court under Article 226 of the Constitution of India. However, the direction to the management not to engage the workman on the passenger vehicle, but to provide him an alternative work, is unwarranted. Therefore, the impugned award of the Labour Court is set aside, insofar as directing the management not to engage the workman on a passenger vehicle and to provide him alternative work, and the rest of the award is confirmed.

Accordingly, both these writ petitions are allowed to the extent indicated above.

C.V.RAMULU,J

01.04.2010
v v